

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHIRLEY S. ABRAHAMSON, et al.,

Plaintiffs,

v.

Case No. 15-C-211

SCOTT NEITZEL, et al.,

Defendants.

MOTION TO TAKE JUDICIAL NOTICE

Defendants Scott Neitzel, the Wisconsin Department of Administration, Pam Radloff, Margaret Brady, Douglas La Follette, and Matt Adaczyk, each in their official capacities, move the Court, pursuant to Fed. R. Evid. 201, to take judicial notice of the following facts and documents because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

It is established law that a federal court “may take judicial notice of documents that are part of the public record.” *Scherr v. Marriott Int’l, Inc.* 703 F.3d 1069, 1073 (7th Cir. 2013). While this motion is made in the context of the pending motion for preliminary injunction, judicial notice is also appropriate and constitutes “a narrow exception” with respect to a motion to dismiss that “permit[s] a district court to take judicial notice of matters of

public record without converting a motion for failure to state a claim into a motion for summary judgment.” *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080-81 (7th Cir. 1997).

All of the following facts and documents are taken from the public record. Links to the documents are listed as well.

1. On November 12, 2013, the Wisconsin Legislature first approved an Amendment changing article VII, section 4(2) of the Wisconsin Constitution to provide that

[t]he chief justice of the supreme court shall be elected for a term of 2 years by a majority of the justices then serving on the court.

See text of 2013 Assembly Joint Resolution 67, located at <http://docs.legis.wisconsin.gov/2013/related/proposals/ajr67> (last visited May 13, 2015) and text of 2013 Senate Joint Resolution 57, located at <http://docs.legis.wisconsin.gov/2013/related/proposals/sjr57> (last visited May 13, 2015).

2. This Amendment was subsequently approved by the next Legislature on January 22, 2015.

See text of 2015 Assembly Joint Resolution 1, located at <http://docs.legis.wisconsin.gov/2015/related/proposals/ajr1> (last visited May 13, 2015) and text of 2015 Senate Joint Resolution 2, located at <http://docs.legis.wisconsin.gov/2015/related/proposals/sjr2> (last visited May 13, 2015).

3. On April 7, 2015, there was a statewide election in Wisconsin.

See website of Wisconsin Government Accountability Board and page for Spring 2015 Election: Official Results, located at <http://www.gab.wi.gov/elections-voting/2015/spring> (last visited May 13, 2015).

4. On the ballot at the April 7, 2015, election, the following referendum question was proposed to the voters:

“Election of chief justice. Shall section 4(2) of article VII of the constitution be amended to direct that a chief justice of the supreme court shall be elected for a two-year term by a majority of the justices then serving on the court?”

See website of Wisconsin Government Accountability Board and page for Referendum on Election of Chief Justice, located at <http://www.gab.wi.gov/elections-voting/2015/spring-chief-justice-referendum> (last visited May 13, 2015).

5. A true and correct copy of Enrolled Joint Resolution 2 on the Referendum on Election of Chief Justice is attached hereto as Exhibit 1.

Exhibit 1 can be accessed through the following link on the Wisconsin Government Accountability Board’s website: http://www.gab.wi.gov/sites/default/files/page/65/2015_enrolled_joint_resolution_2_pdf_26344.pdf (last visited May 13, 2015).

6. A true and correct copy of the Notice of Referendum Election, April 7, 2015, is attached hereto as Exhibit 2.

Exhibit 2 can be accessed through the following link on the Wisconsin Government Accountability Board’s website: http://www.gab.wi.gov/sites/default/files/page/65/type_c_notice_for_referendum_pdf_56552.pdf (last visited May 13, 2015).

7. A true and correct copy of Plaintiff Abrahamson's September 7, 1976, Oath of Office for appointment as justice of the Wisconsin Supreme Court is attached hereto as Exhibit 3.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

8. A true and correct copy of Plaintiff Abrahamson's August 1, 1979, Oath of Office for election as justice of the Wisconsin Supreme Court is attached hereto as Exhibit 4.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

9. A true and correct copy of Plaintiff Abrahamson's June 29, 1989, Oath of Office for appointment as justice of the Wisconsin Supreme Court is attached hereto as Exhibit 5.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

10. On June 24, 1996, Plaintiff Abrahamson signed an Oath of Office as Chief Justice that stated she had

been elected *to the office of* Justice of the Supreme [C]ourt of the State of Wisconsin and now (by length of service) the senior member thereof, and by the Constitution of this state being designated as Chief Justice of this Court.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

11. A true and correct copy of Plaintiff Abrahamson's June 24, 1996, Oath of Office is attached hereto as Exhibit 6.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

12. A true and correct copy of Plaintiff Abrahamson's June 17, 1999, Oath of Office for election as justice of the Wisconsin Supreme Court is attached hereto as Exhibit 7.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

13. A true and correct copy of Plaintiff Abrahamson's July 1, 2009, Oath of Office for election as justice of the Wisconsin Supreme Court is attached hereto as Exhibit 8.

See website of Office of the Secretary of State, State of Wisconsin, page for Oath Search Results, located at <http://sos.nmtvault.com/Oath-PardonResults.aspx?FirstName=SHIRLEY&LastName=AB&Oaths=true> (last visited May 13, 2015).

14. The following newspaper articles referenced in Dockets 3 and 51 are true and correct copies of news stories published prior to the April 7, 2015, statewide election:

a. Exhibit 9 is a true and correct copy of Jason Stein, "*Assembly Approves Amendment on Chief Justice Selection*," Milwaukee Journal-Sentinel, Jan. 22, 2015.

Available at:

<http://www.jsonline.com/news/statepolitics/assembly-to-take-up-chief-justice-selection-upskirting-bill-b99430054z1-289443541.html> (last visited May 13, 2015) (cited in Dkt. 3:5 and filed as Dkt. 51-4).

b. Exhibit 10 is a true and correct copy of Jason Stein, "*Constitutional Amendment Would Let Court Select Chief Justice*," Milwaukee Journal-Sentinel, Oct. 29, 2013.

Available at:

<http://www.jsonline.com/news/statepolitics/constitutional-amendment-would-let-court-select-chief-justice-b99130796z1-229741271.html> (last visited May 13, 2015) (cited in Dkt. 3:5-6 and filed as Dkt. 51-6).

c. Exhibit 11 is a true and correct copy of Christine Bremer Muggli, “*How not to choose a chief justice*,” Wausau Daily Herald (opinion), Mar. 30, 2015.

Available at:

<http://www.wausaudailyherald.com/story/opinion/columnists/2015/03/30/choose-chiefjustice/70675080> (last visited May 13, 2015) (filed as Dkt. 51-5).

d. Exhibit 12 is a true and correct copy of Patrick Marley, “*Shirley Abrahamson could be forced out of Supreme Court chief justice role*,” Milwaukee Journal Sentinel, Dec. 22, 2014.

Available at:

<http://www.jsonline.com/news/statepolitics/shirley-abrahamson-could-be-forced-out-of-supreme-court-chief-justice-role-b99411632z1-286523971.html> (last visited May 13, 2015) (filed as Dkt. 51-7).

e. Exhibit 13 is a true and correct copy of Scott Bauer (Associated Press), “*Wisconsin Senate passes chief justice amendment*,” thenorthwestern.com (A Gannett Company), Nov. 12, 2013.

Available at:

<http://archive.thenorthwestern.com/article/20131112/APC010401/311120438/Wisconsin-Senate-passes-chief-justice-amendment> (last visited May 13, 2015) (filed as Dkt. 51-8).

f. Exhibit 14 is a true and correct copy of Todd Richmond (Associated Press), “*Voters to decide how Wisconsin chief justice is chosen*,” Wisconsin State Journal, Mar. 30, 2015.

Available at:

http://host.madison.com/news/local/govt-and-politics/elections/voters-to-decide-howwisconsin-chief-justice-is-chosen/article_754d8ba0-ea61-5e7b-b356-6bb475584201.html (last visited May 13, 2015) (filed as Dkt. 51-9).

g. Exhibit 15 is a true and correct copy of Andrew Beckett, “*Amendment on picking Wisconsin Supreme Court chief justice advancing quickly*,” Wisconsin Radio Network, Jan. 16, 2015.

Available at:

<http://www.wrn.com/2015/01/amendment-on-picking-wisconsin-supreme-court-chief-justice-advancing-quickly/> (last visited May 13, 2015) (filed as Dkt. 51-10).

WHEREFORE, Defendants Scott Neitzel, the Wisconsin Department of Administration, Pam Radloff, Margaret Brady, Douglas La Follette, and Matt Adaczyk, each in their official capacities, respectfully request that the Court

take judicial notice of the facts, the documents listed above and the documents attached hereto as Exhibits.

Dated this 13th day of May, 2015.

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